

MEMORANDUM

To: Montana Energy and Telecommunications Interim Committee
From: Jennifer Hill-Hart, MT PSC Attorney; Joel Tierney, Utility Engineer/Pipeline Safety Program Manager
Re: Natural Gas Supplier Licensing
Date: February 20, 2018

I. PURPOSE

The purpose of this memorandum is to offer background information to the 2017 Energy and Telecommunications Interim Committee (“ETIC”) about the Public Service Commission’s (“PSC”) licensing procedures and standards for third-party natural gas suppliers under Montana law and PSC rules. This memo includes a detailed description of the licensing process, and license revocation standards.

II. BACKGROUND

By the late 1990s, many states were starting to implement policies to mandate local utility unbundling. This included giving customers a choice in either purchasing natural gas from non-regulated suppliers or continuing to receive unbundled regulated service from the utility. According to one study, few customers ended up purchasing their natural gas from non-regulated suppliers because they were satisfied with their utility service and saw no reason to switch, or found that purchasing gas from non-regulated suppliers was economically unattractive. “The success of unbundling is a matter of customer economics, not political pronouncements. Regulators and legislators can mandate open access, utilities can create unbundled tariffs, but if the customers cannot save money or non-regulated marketers cannot profit by selling either the commodity or new services, unbundling will proceed very slowly.” The same study found few utilities had tariff rate structures that allowed customers to save significantly by purchasing from non-regulated suppliers, and that customers would not likely switch from their historic suppliers unless “they can either save money or obtain new or higher-quality services.”¹

In 1997, the Montana Legislature enacted the Natural Gas Utility Restructuring and Customer Choice Act, “designed to give Montana customers the freedom to choose their energy suppliers.”² The statutes governing natural gas choice are found in Title 69, Chapter 3, Part 14 of the Montana Code Annotated,³ with the specific licensing procedures found at Mont. Code Ann. § 69-3-1405. Montana law states that a natural gas utility may voluntarily offer its

¹Porter Bennett, “Consumer Choice in Natural Gas: A Hard Look at Savings” (1998) 136 *Public Utilities Fortnightly* 32, <<https://www.fortnightly.com/fortnightly/1998/10/consumer-choice-natural-gas-hard-look-savings>>. Last accessed on February 15, 2018.

² *Single Moms, Inc. v. Mont. Power Co.*, 331 F.3d 743, 746 (June 3, 2003); see Mont. Code Ann. § 69-3-1401 et seq.

³See http://leg.mt.gov/bills/mca/title_0690/chapter_0030/part_0140/sections_index.html.

customers choice of natural gas suppliers and provide open access to its transmission facilities, storage facilities, or distribution facilities.⁴ Both NorthWestern Energy and Energy West have voluntarily offered natural gas choice to their customers.⁵ The PSC rules implementing these statutes are found in Mont. Admin. R. 38.5.7001 to 7002, 7010 to 7014 (supplier licensing rules). The PSC has “Natural Gas Supplier Licensing” information on its website.⁶

The PSC adopted standards related to supplier licensing in 1998.⁷ These rules do not apply to a natural gas utility as long as the utility has not restructured under the Customer Choice statute,⁸ i.e. Montana-Dakota Utilities, or become a natural gas supplier per Mont. Code Ann. § 69-3-1402(6).⁹ Montana statute and administrative rules distinguish a natural gas supplier from a natural gas utility. A “natural gas supplier” is licensed by the PSC to offer to sell natural gas to retail customers in Montana, as opposed to a “natural gas utility” which is a public utility as defined by Mont. Code Ann. § 69-3-101, regulated by the PSC.¹⁰

In 1999, the PSC adopted consumer information and protection standards for electric and natural gas suppliers.¹¹ The Montana Legislature later amended the Customer Choice Statute, removing choice from electric supply, requiring amendments to administrative rules, and reflecting that the law now only applies to natural gas suppliers. These consumer information and protection rules only apply to small customers of natural gas supply, specifically residential customers and small natural gas customers.¹²

III. NATURAL GAS SUPPLIER LICENSING

Natural Gas Supplier Licensing Process

A company seeking to obtain a Montana natural gas supplier license must submit an application to the PSC that includes the information required by the PSC’s gas supplier licensing rules.¹³ An application to the PSC for a natural gas supplier license must include:

- the business name of the applicant;
- the street address and the mailing address of the applicant;
- the telephone number of the applicant;

⁴Mont. Code Ann. § 69-3-1403(1).

⁵See Order 6552a, Docket No. D2003.6.75 (Dec. 21, 2004) for Energy West, accessible at: <psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D2003-6-75_6552a.pdf>; see Order 5898d, Docket No. D96.2.22 for NorthWestern Energy, accessible at: <psc.mt.gov/Docs/ElectronicDocuments/pdfFiles/D96-2-22_5898d.pdf>.

⁶<http://www.psc.mt.gov/energy/> (scroll down to the bottom of the page).

⁷See Mont. Admin. R. 38.5.7001–38.5.7021 (2017).

⁸See Mont. Code Ann. § 69-3-1403.

⁹Mont. Admin. R. 38.5.7001(1); see 1998 MAR 1514.

¹⁰Mont. Code Ann. §§ 69-3-1402(6)–(7) (2017); Mont. Admin. R. 38.5.7001(d).

¹¹ See Mont. Admin. R. 38.5.6001–38.5.6010.

¹²A “small natural gas commercial customer” means a commercial natural gas customer with usage per year on an individual account which averages under 500 dekatherm units. Mont. Admin. R. 38.5.6001.

¹³Accessible at: < <http://www.psc.mt.gov/energy/pdf/gasrules.pdf>>.

- a description of the applicant's business organization (e.g., sole proprietorship, partnership, corporation), including:
 - a diagram of organization,
 - an identification of the state in which organized,
 - and a statement as to
 - whether the applicant owns or operates gas distribution, transmission, or storage facilities,
 - where those facilities are located,
 - whether those facilities are open and accessible on a nondiscriminatory basis to all gas suppliers,
 - a list of the applicant's affiliates,
 - a description of each affiliate's business activities and purposes,
 - a statement as to whether any affiliate owns or operates gas distribution, transmission, or storage facilities, and
 - an explanation of where those facilities are located and
 - whether the facilities are open and accessible on a nondiscriminatory basis to all gas suppliers;
- the name, address, and telephone number of the supplier representative to be contacted regarding the application;
- the name, address, and toll-free telephone number of the supplier representative or office that may be contacted by consumers in regard to supply;
- the name, mailing address, street address, and telephone number of the applicant's agent for service of process in Montana, if required by law to designate such agent;
- information demonstrating the gas supply offered or to be offered by the applicant will be provided as offered;
- information demonstrating the gas supply offered or to be offered by the applicant will be adequate in terms of quality, safety, and reliability;
- information demonstrating the applicant's financial integrity as a gas supplier, including a current and detailed balance sheet, income and profit and loss statement, statement of cash flows, and the most recent of the applicant's annual reports to owners (e.g., stockholders); information demonstrating adequate firm deliverability (including supply, pipeline capacity, and interconnection agreements) to meet load requirements;
- a brief description of all federal and state judicial and administrative actions pending against the applicant (including on appeal) in which judgment is sought in an amount of 10 percent or more of the applicant's net worth;
- and identification of all federal and state judicial and administrative actions, if any, whether pending at the time of application (including on appeal) or concluded within 5 years prior to the time of application, which involve the applicant's authority to supply, market, and broker natural gas.¹⁴

¹⁴Mont. Admin. R. 38.5.7010, accessible at: < <http://www.psc.mt.gov/energy/GSupplierLogin.asp>>.

Applicants also must file a sample of each type of contract intended to be used in the providing of supply to residential and small commercial consumers. At the time the applicant applies for a natural gas supplier license, it shall notify distribution services providers and provide copies of all license applications, as well.¹⁵

In addition to the written application, applicants and suppliers must complete and maintain an electronic registration with the PSC.¹⁶ See Attachment A. The average time for PSC action on an uncontested complete application for a natural gas supplier license is 30 days following receipt of the application by the PSC. To date, no natural gas license application has been contested at the PSC, but staff estimates that a contested application would take up to 90 days for Commission Action.

Natural Gas License Revocation Process

Pursuant to a PSC-initiated investigation or upon the complaint of an affected party, the PSC may institute a proceeding to revoke or suspend a license of a natural gas supplier for just cause.¹⁷ PSC rules authorize the PSC to revoke the license of a gas supplier:

38.5.7016 GAS SUPPLIER -- LICENSE REVOCATION

- (1) The commission may revoke the license of a gas supplier if the gas supplier:
 - (a) violates any federal or state law which has as its purpose, directly or indirectly, fair competition among suppliers;
 - (b) violates any federal or state law which has as its purpose, directly or indirectly, protection of consumers;
 - (c) violates any rule of the commission;
 - (d) provides false information or materially incomplete information to the commission in regard to licensing or reporting;
 - (e) fails to file an annual report;
 - (f) otherwise fails to abide by the laws of the United States and the state of Montana which pertain to business, business structure, antitrust, trade, contracts, truth in labeling, consumer protection, privacy, and like laws which are applicable, generally or specifically, to the provision of gas supply;
 - (g) fails to supply gas in accordance with its agreements with customers and representations to the commission; or
 - (h) engages in anticompetitive or abusive practices.¹⁸

The PSC has revoked the license of one natural gas supplier: People's Power and Gas. After the supplier failed to file an annual report in 2015, the PSC was unable to contact them by registered letter and their phone number was disconnected. Staff later discovered People's

¹⁵*Id.*

¹⁶Accessible at: <http://www.psc.mt.gov/energy/GSupplierLogin.asp>.

¹⁷Mont. Code Ann. 69-3-1405(7).

¹⁸Mont. Admin. R. 38.5.7016(1), accessible at: <http://www.mtrules.org/gateway/ruleno.asp?RN=38%2E5%2E7016>.

Power and Gas had filed bankruptcy and were out of business, and revoked the license accordingly.

Licensed Natural Gas Suppliers in Montana

There are thirteen natural gas suppliers licensed with the PSC, ranging from residential, small business (under 500 dkt), commercial, and industrial.¹⁹ See Attachment B. Five of those suppliers²⁰ are licensed to serve residential customers, but the PSC believes that currently only Big Sky Gas actually has residential customers, and the PSC also understands Big Sky Gas is no longer soliciting residential customers and is focusing on small business and commercial supply. Each Natural Gas Supplier is required to file an annual report with the PSC.²¹

Other States with Natural Gas Supplier Choice

The Commission has conducted some limited research into other jurisdictions treatment of claims of false and deceptive marking of natural gas suppliers. Although the PSC is not aware of the current activity and status of customer choice laws or rules in the following jurisdictions, at one point, Georgia, Maryland, California, Nevada, and New York adopted natural gas supplier choice. Likewise, these states may have supplier choice, as well: Arizona, Colorado, Iowa, Kentucky, Louisiana, Maine, Minnesota, Missouri, Oklahoma, South Carolina, Virginia, Vermont, and Washington.²²

¹⁹This list of natural gas supplier information is provided by the suppliers themselves, and the PSC is not responsible for any errors or inaccurate information submitted by suppliers. See www.psc.mt.gov/energy/GSupplierList.asp.

²⁰Commercial Energy of Montana, Energy West Resources, Inc., Big Sky Gas, LLC, Croft Petroleum Co., and DNE Sales, LLC are licensed to provide natural gas supply to residential customers.

²¹See <http://psc.mt.gov/Energy/2016GSAR/>. Last accessed Feb. 16, 2018.

²²Bennett, *supra* n.1 at n.2; see also Elizabeth L. Bhar and Mark E. MacDonald, *A Comparative Overview of the Unbundling of Gas Distribution Services in North America – Lessons for Nova Scotia and New Brunswick*, 38 Alberta L. Rev. 1 (2000), accessible at: < <https://www.albertalawreview.com/index.php/ALR/article/view/514>>.